IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

APPEAL NO.615 OF 2005
IN
COMPANY PETITION NO.949 OF 2004

M/s.Shree Venkatesh Metal Packs (P) Ltd. Appellant
vs.
M/s.Indian Exports Enterprises. Respondent

Mr.J.J.Bhat, senior counsel with Ms.Alpana Ghone
i/b.M/s.Kanga & Co. for the appellant.

Mr.S.H. Patel for the respondent.

CORAM : R. M. LODHA &
J.P. DEVADHAR,JJ.

DATED : 3rd August 2005

P.C.

Heard.

2. Admit.

3. Mr.S.H.Patel, advocate waives service for the respondent.

4. Printing of paper-book dispensed with.

5. By consent, the appeal is heard finally at this stage.

6. Mr.Bhat, the learned senior counsel for the

appellant, made a statement on behalf of the appellant-company that the appellant-company is ready and willing to deposit the amount of Rs.14,44,122/- in this court without prejudice to its rights and contentions in opposition to the respondent's claim.

7. Keeping in view the submission of the learned senior counsel for the appellant, we are satisfied that merits of the diverse contentions of the parties need not be gone into and the interest of justice shall be subserved by the following order:

O R D E R

(i) The appellant-company shall deposit an amount of Rs.14,44,122/- with the Prothonotary & Senior Master of this Court within four weeks from today.

(ii) Upon such amount being deposited by the appellant-company, the Prothonotary & Senior Master shall invest the said amount in fixed deposit of any Nationalised Bank for a period of one year.

(iii) The Company Petition No.949/2004 filed by the respondent shall stand dismissed on deposit of the amount of Rs.14,44,122/- by the

appellant-company.

(iv) The present respondent shall be at liberty to pursue its ordinary remedy of civil suit for recovery of the amount against the appellant-company and upon such suit being filed by the respondent herein, the amount of Rs.14,44,122/- so deposited by the appellant-company shall stand transferred to the account of that Suit.

(v) Upon Suit being filed by the respondent herein, the respondent shall be at liberty to apply for an appropriate order regarding the amount of Rs.14,44,122/- deposited by the appellant company and invested by the Prothonotary & Senior Master.

(vi) We clarify that the time taken by the present respondent in prosecuting the winding up petition shall be excluded under section 14 of the Limitation Act, 1963. In other words, the period from the date on which the company petition was filed until today shall be excluded under section 14 of the Limitation Act while computing the limitation in the suit.

(vii) For a period of four weeks, the advertisement as directed in the impugned order shall not take place.

(viii) It is further made clear that in case no deposit is made by the appellant-company within four weeks from today, the order passed by the learned Company Judge shall remain operative and this appeal shall stand dismissed without further reference to court.

8. We order accordingly.

(R.M. LODHA,J.)

(J.P. DEVADHAR,J.)